

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

SWISSDIGITAL USA CO., LTD,
Plaintiff,

v.

WENGER S.A.,
Defendant.

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6:21-CV-00453-ADA-DTG

**REPORT AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE**

**TO: THE HONORABLE ALAN D. ALBRIGHT,
UNITED STATES DISTRICT JUDGE**

This Report and Recommendation is submitted to the Court pursuant to 28 U.S.C. § 636(b)(1)(C), Fed. R. Civ. P. 72(b), and Rules 1(f) and 4(b) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges. Before the Court is Defendant's Motion to Dismiss for Lack of Jurisdiction and 12(b)(6) Motion to Dismiss for Failure to State a Claim (ECF No. 14). For the following reasons, the Court **RECOMMENDS** that Defendant's Motion be **DENIED**.

I. FACTUAL BACKGROUND

Plaintiff Swissdigital filed this lawsuit accusing Defendant Wenger of infringing United States Patent Nos. 10,574,071 (the “’071 Patent”) and 10,931,138 (the “’138 Patent”). ECF No. 20 ¶¶ 31, 51. The ’071 Patent is a “bag or luggage for convenient charging of personal devices such as smartphones, tablets, or any device that requires recharging.” *Id.* ¶ 5. The ’138 Patent “is a sheath that may be incorporated into luggage, bags, activewear, or other wearables for

convenient charging of personal devices such as smartphones, tablets or any device that requires recharging.” *Id.* ¶ 6.

Defendant filed a motion to dismiss for failure to state a claim under 12(b)(6) and for lack of jurisdiction under 12(b)(2). ECF No. 14. Afterwards, Plaintiff filed a First Amended Complaint. ECF No. 20. Defendant filed an Answer to Plaintiff’s First Amended Complaint. ECF No. 23.

II. DISCUSSION

Plaintiff’s amended complaint renders the original complaint of no legal effect because the amended complaint does not refer to, adopt, or incorporate by reference the original complaint. *See King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994). Generally, an amended complaint renders pending motions moot. *See Cedillo v. Standard Oil Co. of Tex.*, 261 F.2d 443 (5th Cir. 1958) (finding that the district court erred in granting an abandoned motion to dismiss). Defendant admits that the amended complaint mooted its motion to dismiss. ECF No. 27 at 3 (“SwissDigital filed a First Amended Complaint...mooting the First Motion to Dismiss...”). Defendant did not file a second motion to dismiss in response to Plaintiff’s first amended complaint, and instead filed an Answer. ECF No. 23.

Accordingly, the Court recommends that the motion to dismiss (ECF No. 14) be denied as moot.

III. RECOMMENDATION

For the above reasons, it is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that Defendant’s Motion to Dismiss (ECF No. 14) be DENIED as moot.

IV. OBJECTIONS

The parties may wish to file objections to this Report and Recommendation. Parties filing objections must specifically identify those findings or recommendations to which they object. The District Court need not consider frivolous, conclusive, or general objections. *See Battle v. U.S. Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v Arn*, 474 U.S. 140, 150–53 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc). Except upon grounds of plain error, failing to object shall further bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas*, 474 U.S. at 150–53; *Douglass*, 79 F.3d at 1415.

SIGNED this 10th day of May, 2022.



DEREK T. GILLILAND
UNITED STATES MAGISTRATE JUDGE